

Remarks

Claims 1-33 remain in this application. Claims 1-5, 8, 9, 11-17, 19-21, 23-26, and 28-31 are amended.

Claims 1-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U. S. Patent No. 6,471,663 in view of U. S. Patent No. 4,838,263 (Warwick et al.). A terminal disclaimer is submitted herewith in compliance with 37 C.F.R. 1.321(c) to overcome the aforesaid double patenting rejection. A check in the amount of \$110.00 to cover the fee for this Terminal Disclaimer is enclosed.

Reconsideration of the rejection of claims 1-33 as being unpatentable under 35 U.S.C. 103(a) over U.S. Pat. No. 2,588,192 to Akerman et al. ("Akerman") in view of U.S. Pat. No. 4,838,263 to Warwick et al. ("Warwick") is requested. It is believed that independent claims 1, 19, 20, 23 and 29-31, and dependent claims 2-18, 21, 22, 24-28, 32, and 33, patentably distinguish over Akerman and Warwick at least for any one of the reasons given below.

Regarding claim 1, the office action asserts that "[i]n view of the teaching of Warwick et al, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide plural airports and rigid front panel for the vest of Akerman to concentrate the forces inwardly against the patient's chest." The applicants respectfully disagree. Nothing in any of the cited references suggest replacing the flexible outer layer 9 in Akerman's vest 6 with Warwick's rigid outer shell 14. Akerman teaches against replacing his flexible outer layer 9 with a rigid outer shell at column 1 lines 49 et seq., wherein it states that the outer and inner layers 9 and 10 are "flexible to provide comfort and also to permit expansion and contraction of the fluid chamber 11."

Even assuming *arguendo* (and this is not conceded) that it would have been obvious to combine Akerman and Warwick in the manner proposed, one would still not arrive at applicants' claim 1 apparatus. Akerman does not disclose or suggest "the air bladder being shaped to essentially only cover a lung containing region of the patient's chest and to not substantially extend onto ... the patient's shoulders when the front panel and the air bladder are positioned over the patient's chest." Instead, as clearly shown in Fig. 1, Akerman's air bladder 11 extends onto the patient's shoulders. At column 2, lines 17, Akerman states that "[o]n the right hand *shoulder portion* of the vest 6 is a fluid conduit connector 20 which in the detail in Fig. 4 is shown extending through the outer fluid tight layer 9." (*Italics provided.*) Warwick is neither proffered for, nor does it overcome the above-mentioned deficiency of Akerman. Rather, as disclosed at column 4 lines 54 et seq., Warwick's bladder 16 extends across the patient's back and closes in front with hook and loop fasteners.

Regarding claim 19, Akerman does not disclose or suggest “the front panel and the air bladder being shaped to essentially only cover a lung containing region of the patient’s chest and to not substantially extend onto ... the patient’s shoulders when the front panel and the air bladder are positioned over the patient’s chest.”

Regarding claim 20, Akerman does not disclose or suggest “the air bladder being shaped to essentially only cover a lung containing region of the patient’s chest from about the patient’s collar bone to about a bottom of the patient’s rib cage and to not substantially extend onto ... the patient’s shoulders when the front panel and the air bladder are positioned over the patient’s chest.”

Regarding claim 23, Akerman does not disclose or suggest “the air bladder being shaped to not substantially extend onto the patient’s back and the patient’s shoulders when the air bladder is positioned over the lung containing region of the patient’s chest.”

Regarding claim 29, Akerman does not disclose or suggest “positioning a vest on a patient so that an air bladder carried on an inner surface of a front panel of the vest essentially only covers a lung containing region of the patient’s chest” in combination with “the air bladder being shaped to not substantially extend onto ... the patient’s shoulders when the air bladder is positioned over the lung containing region of the patient’s chest.”

Regarding claim 30, Akerman does not disclose or suggest “positioning a vest carrying an air bladder so that the air bladder engages only the patient’s chest and not the patients ... shoulders.”

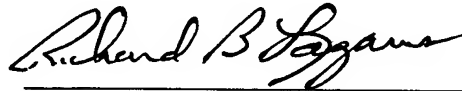
Regarding claim 31, Akerman does not disclose or suggest “mounting on the patient a vest having a front panel with an air bladder so that the air bladder is positioned essentially only in contact with a lung containing region of the patient’s chest but not in contact with the patient’s ... shoulders.”

Accordingly, at least for any one of these reasons, applicants, respectfully, submit that amended independent claims 1, 19, 20, 23 and 29-31, and dependent claims 2-18, 21, 22, 24-28, 32, and 33, patentably distinguish over Akerman and Warwick, and hence withdrawal of this 35 U.S.C. 103(a) rejection thereof is respectfully requested.

In view of the foregoing amendment and supporting remarks, the subject application is now deemed to be in condition for allowance, and such action is respectfully requested. If the Examiner believes that a telephonic interview would expedite the allowance of this application, he is requested to contact the undersigned for a prompt resolution of any outstanding issues.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response, and shortages and other fees be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435, with reference to file 7175-74405.

Respectfully submitted,
BARNES & THORNBURG

A handwritten signature in cursive script, reading "Richard B. Lazarus", written in black ink.

Richard B. Lazarus
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